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## IRELL & MANELLA LLP

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February 24, 1997

writer's direct dial number

(310) 203-7573

### VIA FACSIMILE

Peter H. Kaufman, Esq. Deputy Attorney General For the State of California 110 West "A" Street, Suite 1100 San Diego, California 92101

> Mancuso v. California State Coastal Conservancy, et al. L.A. Sub. Ct. No. BS 040 197

#### Dear Peter:

Enclosed for discussion purposes is a rough draft of a proposed settlement agreement for the above-referenced matter. The framework which the draft embodies generally follows the outline of our discussions and your letter of January 6, 1997, while also establishing a timeline for the performance of the preliminary government agency actions we have discussed.

Pending our discussions, I have omitted provision for the effect of litigation which challenges agency approval of the reconveyance itself.

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IRELL & MANELLA LLP

Peter H. Kaufman, Esq. February 24, 1997 Page 2

Please call me once you have had a chance to review the draft.

Sincerely,

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#### SETTLEMENT AGREEMENT

#### I. PARTIES

This Settlement Agreement ("Settlement Agreement") is entered into by and between the following parties ("Settling Parties"):

- Frank Mancuso, Sr., an individual, and his Related Entities<sup>1</sup> (collectively, \*Mancuso<sup>1</sup>);
- 2. The California State Coastal Conservancy and its Related Entities (collectively, "Conservancy");
- 3. The Department of General Services and its Related Entities (collectively, "DGS"); and
- 4. The Mountains Recreation and Conservation Authority and its Related Entities (collectively, "Authority");

#### II. RECITALS

This Settlement Agreement is made with reference to the following facts:

- A. Mancuso is the owner of certain real property which is improved as a single family residence located within the City of Malibu, Los Angeles County, California (hereinafter the "Mancuso Residence").
- B. The Conservancy is the owner of currently undeveloped easements and offers to dedicate easements which burden a portion of the Mancuso Residence and an adjacent property; all of which are more particularly described on Exhibit A hereto (collectively, the "Easement"). The Conservancy has been in the process of evaluating whether to

Por purposes of this Settlement Agreement, a Settling Party's "Related Entities" shall be defined as its predecessors, successors, assignees, administrators, legal representatives, joint venturers, partners, agents, members, attorneys, officers, directors, employees, shareholders, affiliates, associates, parent entities, subsidiary entities (whether or not wholly owned), and their officers, directors, employees, shareholders and affiliates, and any other representative of that Settling Party.

open and develop the Easement for public parking and pedestrian use, or whether to dispose of the Easement.

- The Easement is currently unimproved, not open to the public, and impassable due to severe natural landforms, dense natural vegetation, and private improvements. Upon entering the Mancuso Residence, the Easement overlays a portion of the driveway, passes through the front and side yard improvements adjacent to the house, through portions of the rear yard, and then drops steeply down to Escondido Beach, which is approximately 130 feet below Pacific Coast Highway.
- D. Various disputes with respect to the Easement exist between Mancuso, the Conservancy, and other public agencies. These disputes, include, without limitation, whether the potential benefits of developing and opening the Easement are outweighed by the potential costs of developing and operating the Easement (including the feasibility and cost of mitigating potential environmental impacts); whether agents of the State of California warranted that the Easement would not be opened or developed for public use; and, if, in the event the Conservancy determined to open the Easement, what the respective responsibilities of Mancuso, the Conservancy, the Authority, and other public agencies would be.
- Mancuso has filed an action (Los Angeles County Superior Court, Case No. BS 040197; the "Action") to vacate the Conservancy's May 16, 1996 action with respect to the Easement on the basis of the Conservancy's alleged failure to provide due process and statutorily required notice and opportunity to be heard, and for failure to comply with the California Environmental Quality Act ("CRQA"). The Action also seeks to set aside a 20-year property management agreement which the Conservancy entered into with the Authority for failure to provide notice and opportunity to be heard and for failure to comply with CEQA. The Action also alleges that the Conservancy and DGS have failed to comply with Section 31107.1 of the Public Resources Code, which requires the Conservancy and DGS to jointly develop and implement procedures to ensure that the Conservancy's transactions are undertaken "efficiently and equitably with proper notice to the public."
- F. The Settling Parties wish to settle and resolve their disputes and claims by, subject to the conditions precedent and contingencies described herein, providing for the sale of the Easement by the Conservancy to Mancuso.

Now, in consideration of the mutual promises and obligations set forth below, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Settling Parties hereby agree as follows:

with

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#### III. MUTUAL RELEASES.

- A. The Settling Parties agree that upon the close of that transaction contemplated by and in accordance with that certain Furchase and Sale Agreement at ached hereto as Exhibit B (the "Purchase Agreement"), Mancuso shall forever relieve, release, and discharge the Conservancy, DGS, and the Authority, and each of them, from any and all known or unknown, suspected or unsuspected, contingent or fixed, and existing or potential claims, counterclaims, cross-claims, complaints, grievances, allegations, demands, liabilities, losses, obligations, damages, costs, expenses (including, without limitation, attorneys' fees), lawsuits, actions (in law, equity, or otherwise), causes of action (including, but not limited to, petitions for a writ and/or alternative writ of mandamus or administrative mandamus), and disputes between Mancuso, the Conservancy, DGS, and the Authority that in any way relate to, or arise out of, or are connected in any way with the Easement including those claims asserted in the Action (collectively, "Claims").
  - B. The Settling Parties agree that upon the close of that transaction contemplated by and in accordance with the Purchase Agreement, the Conservancy, DGS, and the Authority, and each of them, shall forever relieve, release, and discharge the Mancuso of and from any and all Claims.
    - C. The Settling Parties expressly understand that California Civil Code Section 1542 ("Section 1542") provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The Settling Parties knowingly, voluntarily, intentionally, and expressly waive any and all rights and benefits conferred by Section 1542 or any law of any state or territory of the United States or any foreign country, principle of common law, or other law that is similar to Section 1542, and agree and acknowledge that this waiver is an essential term of this Settlement Agreement, without which the consideration given herein would not have been given.

D. The Settling Parties acknowledge that there is a risk that subsequent to the execution of this Settlement Agreement, they, or any of them, may discover, incur, or suffer claims or damages which were unknown or unanticipated at the time this Settlement Agreement was executed, including, without limitation, unknown or unanticipated claims or damages

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that in any way relate to or arise out of or are connected in any way with the matters or events which were, or could have been, alleged in the Writ Action, and/or in actions arising out of the same matters or events, which if known by them on the date of the execution of this Settlement Agreement, may have materially affected their decision to execute this Settlement Agreement. The Settling Parties expressly assume the risk of such unknown and unanticipated claims and damages and agree that these Releases apply to all such claims and damages.

# Actions To Effectuate The Settlement Agreement

- Independent Discretion of Government Agencies It is acknowledged and agreed that Sections IV.B and IV.D reference certain preliminary actions which may or may not be performed by the governmental agencies, boards, and commissions, but which are conditions precedent to the commitment by the Conservancy and DGS to close the transaction contemplated by the Purchase Agreement. It is acknowledged that each such action constitutes an exercise of the independent discretion of the agency, board or commission concerned pursuant to the procedures of such entities and the laws of the State of California. Nothing in this Settlement Agreement is intended to compel such actions or to require the exercise of governmental discretion in any particular way; provided, however, that if notice is required for the purposes of this Settlement Agreement in conjunction with any such action which has been taken, then notice shall be provided as required by this Settlement Agreement.
- B. <u>Initiating Actions</u>. The Settling Parties agree that this Settlement Agreement shall be automatically terminated and shall be of no further force and effect without notice in the event the following two conditions precedent have not been satisfied:
  - 1. The Settling Parties shall have executed and delivered this Settlement Agreement no later than April 17, 1997; and
    - 2. No later than April 17, 1997, the Conservancy Board shall have adopted a finding pursuant to Public Resources Code Section 31404 based on the feasibility study authorized by the Conservancy on January 23, 1997 that the benefits of public use of the Easement would be outweighed by the costs of development and maintenance.
    - C. Opening of Transfer Escrow In the event that the conditions precedent specified in Section IV.B.2 have been satisfied, then the Conservancy and Mancuso shall take the following actions:



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- a. Within ten (10) days of the Conservancy Board's adoption of the finding specified in Section IV.B.2, an escrow shall be opened by Mancuso and the Conservancy pursuant to the Purchase Agreement.
- b. Concurrent with the opening of the escrow, the Conservancy shall deposit with the escrow officer grant deeds in the form attached hereto as Exhibits C and D, conveying the Easement to Mancuso and to Wildman, respectively (the "Grant Deeds"). The escrow officer shall close the escrow in accordance with the Purchase Agreement by delivering the Grant Deeds to Mancuso and Wildman (as the case may be) and by recording the Grant Deeds in the official records of Los Angeles County as early as possible after each of the conditions precedent to closing set forth in Section IV.E have been satisfied, or have been waived by both Mancuso and the Conservancy, but in no event later than September 30, 1997.
- C. Concurrent with the opening of the escrow, Mancuso shall deposit with the escrow officer an irrevocable letter of credit from an institution acceptable to the Conservancy in the sum of Nine Hundred and Seventy Eight Thousand Dollars (\$978,000.00). Said letter of credit shall be effective until September 30, 1997, and shall be due and payable to the Conservancy when and only when: (1) The conditions precedent to closing set forth in Section IV.E have been satisfied, or have been waived by both Mancuso and the Conservancy; and (2) the Grant Deeds have been delivered to Mancuso and Wildman (as the case may be), and have been recorded by the escrow officer in the official records of Los Angeles County.
- D. Further Implementing Steps The Settling parties agree that unless waived in writing by both Mancuso and the Conservancy, this Settlement Agreement shall be automatically terminated and shall be of no further force and effect without notice in the event any of the implementing actions set forth in this Section IV.D are not fulfilled.
- 1. No later than May 22, 1997, the Conservancy Board shall have tentatively approved a concept and a conceptual budget for an access program that would maintain accessways in Escondido Beach and/or elsewhere in the Malibu coastal area but which does not include developing or opening the Easement (collectively, the "Access Program").
- 2. Within ten (10) days of the Conservancy Board's approval of the concept specified in Section IV.C.1, the Conservancy Board shall have submitted to the California Coastal Commission the concept for the Access Program together with a request for a contribution of funding from the Coastal Commission. The request for a contribution of funding shall include the following elements:

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- a. Coastal Commission approval of the transfer of the balance of the Black Tor account [add detailed reference] into an endowment account to be used by the Conservancy to implement the Access Program (the "Conservancy Access Account");
- b. Coastal Commission approval of the transfer of funds in Coastal Commission Malibu Access Account [\$82,000] to the Conservancy Access Account to be used by the Conservancy to implement the Access Program; and
- c. Coastal Commission approval of the sale of Easement by the Conservancy subject to the condition that the proceeds from such sale are placed in the Conservancy Access Account and are used by the Conservancy to implement the Access Program.
- 3. No later than July 24, 1997, the Coastal Commission shall have approved approve each of the items set forth in Section IV.D.2.a through IV.D.2.c. In the event of such approval, the Executive Director of the Conservancy shall, within three (3) business days of the same, give written notice to Mancuso and to the escrow officer.

#### E. Final Implementing Steps To Close Escrow

- 1. In the event that initiating and implementing actions set forth in Section IV.B and IV.D have taken place, then, within three (3) business days, but in no event later than August 24, 1997, the Conservancy Board shall notify the escrow officer to close the transaction contemplated by the Purchase Agreement.
- 2. In the event that initiating and implementing actions set forth in Section IV.B and IV.D have taken place, then, within three (3) business days, but in no event later than August 24, 1997, the Conservancy Board shall notify the escrow officer to close the transaction contemplated by the Purchase Agreement.

#### V. DISMISSAL WITH PREJUDICE.

- A. The Settling Parties agree that upon the close of escrow of that transaction contemplated by and in accordance with that certain escrow agreement attached hereto as Exhibit B, counsel for Mancuso shall provide to counsel for the Conservancy, DGS and the Authority, an executed Dismissal with Prejudice of the Action in the form attached hereto as Exhibit E (the "Dismissal with Prejudice").
- B. The Conservancy accepts responsibility for causing the filing of the Dismissal with Prejudice and for providing a conformed copy of the filed document to counsel for the

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Settling Parties. The Dismissal with Prejudice shall be filed by the Conservancy with the Superior Court, and, upon entry by the clerk of the Superior Court of California, be final, binding, and nonappealable, and the Settling Parties, on their behalf and on behalf of their respective Related Entities, shall and hereby do knowingly, voluntarily, intentionally, and expressly waive and relinquish any and all rights of appeal, or for relief from judgment, that they otherwise may have possessed with respect to the actions thereby dismissed.

#### VI. COVENANT NOT TO SUE.

- A. Subject to the Excepted Matters set forth in Section VI hereof, the Mancuso and its Related Entities agree that upon the close of escrow of that transaction contemplated by and in accordance with the Purchase Agreement, they will forever refrain and forbear from commencing, instituting, or prosecuting any Claims that relate to or arise out of or are connected in any way with the matters or events which were, or could have been, alleged in the Action, and/or in Claims arising out of the same matters or events, including, but not limited to, an action claiming that this Settlement Agreement, or any portion thereof, was fraudulently induced.
- B. Subject to the Excepted Matters set forth in Section VI hereof, the Conservancy, DGS, and the Authority, and each of them, and their Related Entities agree that upon the close of escrow of that transaction contemplated by the Purchase Agreement, they will forever refrain and forbear from commencing, instituting, or prosecuting any Claims that in any way relate to or arise out of or are connected in any way with the matters or events which were, or could have been, alleged in the Action, and/or in actions arising out of the same matters or events, including, but not limited to, an action claiming that this Settlement Agreement, or any portion thereof, was fraudulently induced.
  - C. The Settling Parties acknowledge and agree that monetary damages alone are inadequate to compensate any party or such party's Related Entities for injury caused or threatened by a breach of this Covenant Not To Sue and that preliminary and permanent injunctive relief restraining and prohibiting the prosection of any action or proceeding brought or instituted in violation hereof is a necessary and appropriate remedy in the event of such a breach. Nothing contained in this paragraph, however, shall be interpreted or construed to prohibit or in any way limit the right of a non-breaching party and its Related Entities to obtain, in addition to injunctive relief, an award of monetary damages against any person or entity breaching this Covenant Not To Sue and/or this Settlement Agreement.

#### VII. EXCEPTED MATTERS.

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Any action or proceeding brought to enforce the terms of this Settlement Agreement and/or the Purchase Agreement are excepted from the Covenant Not To Sue set forth in Section VI, above.

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#### VIII. REPRESENTATIONS AND WARRANTIES.

- Independent Legal Advice: Each of the Settling Parties represents, warrants, and agrees that it has received independent legal advice from its attorneys with respect to the advisability of executing this Settlement Agreement.
- No Other Representation: Each of the Settling Parties represents, warrants, and agrees that in executing this Settlement Agreement it has relied solely on the statements expressly set forth herein. Each of the Settling Parties further represents, warrants, and agrees that in executing this Settlement Agreement it has placed no reliance whatsoever on any statement, representation, or promise of any other party or any other person or entity, not expressly set forth herein, or upon the failure of any other party or any other person or entity to make any statement, representation or disclosure of anything whatsoever. The Settling Parties have included this clause: (i) to preclude any claim that any party was in any way fraudulently induced to execute this Settlement Agreement; and (ii) to preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Settlement Agreement.
- Factual Investigation: Each of the Settling Parties represents, warrants, and agrees that it has made such investigation of the facts pertaining to the Claims that in any way relate to or arise out of or are connected in any way with the matters or events which were, or could have been, alleged in the Action, and/or in Claims arising out of the same matters or events, as well as and any other matters contained in or relating to this Settlement Agreement, as it deemed necessary or desirable.
- No Assignment: Each of the Settling Parties represents and warrants that there has been no assignment, transfer, or subrogation of any interest in any Claims which are the subject matter hereto and which are released by that party pursuant to this Settlement Agreement. The Settling Parties agree to indemnify and hold each other harmless from any liabilities, losses, claims, demands, costs, and expenses (including, without limitation, attorneys' fees) incurred by them as a result of any person or entity, including, without limitation, underwriters and insurance carriers, asserting such assignment, transfer, or subrogation.

E. Authority: Each of the Settling Parties represents, warrants and agrees that it has the full right and authority to enter into this Settlement Agreement, and that the person executing this Settlement Agreement on its behalf has the full right and authority to fully commit and bind such party.

### IX. GENERAL.

- A. Condition Precedent to Effectiveness: The Settling Parties agree that in the event that this Settlement Agreement is terminated, the close of escrow of that transaction contemplated by the Purchase Agreement does not take place in accordance with the terms of such Purchase Agreement, that there is a breach of such Purchase Agreement, or in the event that such Purchase Agreement is otherwise terminated, then this Settlement Agreement and all of the Settling Parties' obligations hereunder (including, without limitation, the obligations to grant mutual releases pursuant to Section III, the obligation to dismiss the Writ Action pursuant to Section V, and the covenants not to sue pursuant to Section VI), shall be automatically terminated (without the necessity for notice) and shall be of no further effect whatsoever.
- B. <u>Confidentiality</u> This Settlement Agreement and the transactions contemplated hereby (including, without limitation, the Purchase Agreement) shall be maintained as confidential by the Settling Parties, and shall not be disclosed to any third party without the prior written consent of all of the Settling Parties.
- C. Continuation of Hearing on Action: It is acknowledged that the Action has been ordered off calendar by the Los Angeles County Superior Court. Pending the close of escrow of that transaction contemplated by and in accordance with the Purchase Agreement, and provided that this Settlement Agreement has not otherwise been terminated, then the Settling Darties shall cooperate in obtaining such continuances of the hearing on the Action as are reasonably necessary to permit this Settlement Agreement and the Purchase Agreement to be consummated. Further, it is agreed that unless this Settlement is otherwise terminated in accordance with the provisions hereof, the respective obligations of the parties under this Settlement Agreement and the Purchase Agreement shall continue notwithstanding the pendency, determination or final resolution of the Action.
  - D. Payment of Litigation and Administrative Costs: The Settling Parties agree that each of the Settling Parties will bear all of their own fees (including, but not limited to, attorneys fees) and costs in connection with the implementation of this Settlement Agreement.

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- E. No Admissions: The Settling Parties agree and acknowledge that this Settlement Agreement represents a settlement of disputed Claims and that, nothing in this Settlement Agreement constitutes or shall be construed as an admission of any facts in connection with any Claims, or an admission or acknowledgment of the existence of any liability or claim or wrongdoing on the part of any Settling Party.
- F. Full Integration: This Settlement Agreement is the final written expression and the complete and exclusive statement of all of the agreements, conditions, promises, representations, and covenants between the Settling Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements, negotiations, representations, understandings, and discussions between and among the Settling Parties, their respective representatives, and any other person or entity, with respect to the subject matter covered hereby. Any amendment to this Settlement Agreement must be in writing, must specifically refer to this Settlement Agreement, and must be signed by duly authorized representatives of each of the Settling Parties.
- G. Survival of Warranties: All representations and warranties contained in this Settlement Agreement shall survive its execution, effectiveness, and delivery. expressly understood and agreed by the Settling Parties that none of the releases set forth herein are intended to or do release any claims or rights arising out of this Settlement Agreement or the breach of it.
- H. Benefits Successors and Assigns: This Settlement Agreement shall be binding upon, and shall inure to the benefit of, each of the Settling Parties and each of their respective successors and assigns, and each of them.
- I. Attorneys' Fees: In any action brought under or pursuant to any of the terms and conditions of this Settlement Agreement, the prevailing party in any such proceeding shall be entitled, in addition to any other relief awarded by the Court or other tribunal, to its costs and expenses, including its reasonable attorneys' fees incurred in any such action.
- Forum Selection: Any and all disputes between the Settling Parties which may arise pursuant to this Settlement Agreement will be heard and determined before a federal or state court located in Los Angeles County, California.
- California Law Governs: This Settlement Agreement shall be construed and enforced in accordance with, and governed by the internal, substantive laws of the State of California.

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- L. No Presumption From Drafting: Given that all Settling Parties have had the opportunity to draft, review and edit the language of this Settlement Agreement, no presumption for or against any party arising out of drafting all or any part of this Settlement Agreement will be applied in any action relating to, connected with or involving this Settlement Agreement, and each of the Settling Parties will be deemed to have participated equally in the drafting of every provision of this Agreement.
- M. Notices: All notices under this Settlement Agreement will be in writing and will be delivered by personal service or certified mail, to such address as may be designated from time to time by the relevant Settling Party, and which will initially be as set forth below. Any notice sent by certified mail will be deemed to have been given on the fifth day after the date on which it is mailed. All notices given by personal service will be deemed given when received. Notices will be addressed as follows:

#### a. If to Mancuso:

Mr. Frank Mancuso % Allan J. Abshez, Esq. Trell & Manella 1800 Avenue of the Stars, Suite 900 Los Angeles, California 90067

#### b. If to the Conservancy:

- N. <u>Severability</u>: With the exception of the release provisions of this Settlement Agreement, if any other provisions of this Settlement Agreement are found to be unlawful, void or for any other reason unenforceable, such provisions shall be deemed severable from, and shall in no way affect the validity or enforceability of, the remaining provisions of this Settlement Agreement.
- O. <u>Headings</u>: The headings to the paragraphs of this will not be deemed a part hereof or affect the construction or interpretation of the provisions hereof.
- P. Counterparts: This Settlement Agreement may be executed in any number of counterparts by the Settling Parties, and when each Settling Party has signed and delivered at least one such counterpart to the other party, each counterpart shall be deemed an original and taken together shall constitute one and the same Settlement Agreement that shall be binding and effective as to all of the Settling Parties.
- Q. <u>Further Assurances</u>. The Settling Parties each agree to execute and deliver to the other from time to time such additional documents and instruments as the other may

reasonably request, and to take such reasonable actions as may be required, in order to fully implement the provisions and intent of this Settlement Agreement and the Purchase Agreement.

IN WITNESS WHEREOF, the Settling Parties hereto have approved and executed this Agreement on the dates set forth opposite their respective signatures.

EXECUTED by the parties as follows:

		"MANCUSO" FRANK MANCUSO, SENIOR
April	, 1997	By: Frank Mancuso, Sr.
	•	
		"CONSERVANCY" THE CALIFORNIA COASTAL CONSERVANCY
April	, 1997	Ву:
		Its:
		"DGS" THE CALIFORNIA DEPARTMENT OF GENERAL SERVICES
April	, 1997	By:
		Its:
		"AUTHORITY" THE MOUNTAINS RECREATION AND CONSERVATION AUTHORITY
April	, 1997	Ву:

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APPROVED AS TO FORM AND CONTENT:

IRELL & MANELLA

April , 1997

By:\_

Allan J. Abshez, Esq. Attorneys for the Mancuso

CALIFORNIA ATTORNEY GENERAL

Peter Kaufman, Esq. Attorneys for the Consevancy, DGS, and the Authority

#### EXHIBITS

NO. 965

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Exhibit	A	Legal description of Basement
Exhibit	B	Purchase and Sale Agreement
Exhibit	C	Grant Deed Conveying to Mancuso
Exhibit	D	Grant Deed Conveying to Wildman
Exhibit	B	Dismissal

02/28/97